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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 BAILEY N.,

10 Plaintiff,

Case No. C19-5326 RSL

11 v.

ORDER AFFIRMING DENIAL OF
BENEFITS

12 COMMISSIONER OF SOCIAL
SECURITY,

13 Defendant.

14 Plaintiff Bailey N. appeals the final decision of the Commissioner of the Social
15 Security Administration (“Commissioner”), which denied her application for
16 Supplemental Security Income under Title XVI of the Social Security Act (the “Act”), 42
17 U.S.C. §§1381-83f, after a hearing before an administrative law judge (“ALJ”). For the
18 reasons set forth below, the Commissioner’s decision is AFFIRMED and the case is
19 DISMISSED with prejudice.

20 I. FACTS AND PROCEDURAL HISTORY

21 Plaintiff is a 28-year-old woman with a high school education. See Admin.
22 Record (“AR”) at 48, 69. Plaintiff applied for benefits, alleging disability as of
23 September 7, 2007. Id. at 69, 155-60. Her claims were denied on initial administrative

1 review and on reconsideration. Id. at 68-88. On September 13, 2017, ALJ Gerald Hill
2 held a hearing, at which Plaintiff and a vocational expert testified. Id. at 30-67.

3 On March 1, 2018, ALJ Hill issued a decision denying Plaintiff's claim for
4 benefits. Id. at 15-22. The Appeals Council denied review. Id. at 1-3. Plaintiff then
5 sought review before this Court. Compl. (Dkt. #3).

6 II. STANDARD OF REVIEW

7 Pursuant to 42 U.S.C. §405(g), the Court may set aside the Commissioner's denial
8 of social security benefits when the ALJ's findings are based on legal error or not
9 supported by substantial evidence in the record as a whole. Hill v. Astrue, 698 F.3d
10 1153, 1159 (9th Cir. 2012). "Substantial evidence" is more than a scintilla, less than a
11 preponderance, and is such relevant evidence as a reasonable mind might accept as
12 adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971);
13 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for
14 determining credibility, resolving conflicts in medical testimony, and resolving any other
15 ambiguities that might exist. Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995).
16 While the Court is required to examine the record as a whole, it may neither reweigh the
17 evidence nor substitute its judgment for that of the Commissioner. Thomas v. Barnhart,
18 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
19 rational interpretation, it is the Commissioner's conclusion that must be upheld. Id.
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22 III. EVALUATING DISABILITY

23 Plaintiff bears the burden of proving that she is disabled within the meaning of the

1 Act. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999). The Act defines disability as
2 the “inability to engage in any substantial gainful activity” due to a physical or mental
3 impairment that has lasted, or is expected to last, for a continuous period of not less than
4 12 months. 42 U.S.C. §1382c(a)(3)(A). A claimant is disabled under the Act only if her
5 impairments are of such severity that she is unable to do her previous work, and cannot,
6 considering her age, education, and work experience, engage in any other substantial
7 gainful activity existing in the national economy. 42 U.S.C. §1382c(a)(3)(B); see also
8 Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

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10 The Commissioner has established a five-step sequential evaluation process for
11 determining whether a claimant is disabled within the meaning of the Act. See 20 C.F.R.
12 §416.920. The claimant bears the burden of proof during steps one through four.
13 Valentine v. Comm’r of Soc. Sec. Admin., 574 F.3d 685, 689 (9th Cir. 2009). At step
14 five, the burden shifts to the Commissioner. Id. If a claimant is found to be disabled at
15 any step in the sequence, the inquiry ends without the need to consider subsequent steps.
16 Step one asks whether the claimant is presently engaged in “substantial gainful activity.”
17 20 C.F.R. §416.920(b).¹ If she is, disability benefits are denied. If she is not, the
18 Commissioner proceeds to step two. Id. At step two, the claimant must establish that she
19 has one or more medically severe impairments, or combination of impairments, that limit
20 her physical or mental ability to do basic work activities. 20 C.F.R. §416.920(c). If the
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23 ¹ Substantial gainful activity is work activity that is both substantial, *i.e.*, involves
significant physical and/or mental activities, and gainful, *i.e.*, performed for profit. 20 C.F.R.
§416.972.

1 claimant does not have such impairments, she is not disabled. Id. If the claimant does
2 have a severe impairment, the Commissioner moves to step three to determine whether
3 the impairment meets or equals any of the listed impairments described in the regulations.
4 20 C.F.R. §416.920(d). A claimant whose impairment meets or equals one of the listings
5 for the required 12-month duration is disabled. Id.

6 When the claimant's impairment neither meets nor equals one of the impairments
7 listed in the regulations, the Commissioner must proceed to step four and evaluate the
8 claimant's residual functional capacity ("RFC"). 20 C.F.R. §416.920(e). Here, the
9 Commissioner evaluates the physical and mental demands of the claimant's past relevant
10 work to determine whether she can still perform that work. 20 C.F.R. §416.920(f). If the
11 claimant is able to perform her past relevant work, she is not disabled; if the opposite is
12 true, then the burden shifts to the Commissioner at step five to show that the claimant can
13 perform other work that exists in significant numbers in the national economy, taking into
14 consideration the claimant's RFC, age, education, and work experience. 20 C.F.R.
15 §416.920(g); Tackett, 180 F.3d at 1099-1100. If the Commissioner finds the claimant is
16 unable to perform other work, then the claimant is found disabled and benefits may be
17 awarded. 20 C.F.R. §416.920(g).

18 IV. DECISION BELOW

19 On March 1, 2018, ALJ Hill issued a decision finding the following:

- 20 1. The claimant has not engaged in substantial gainful activity since January
21 8, 2016, the application date. See 20 C.F.R. §416.971-76.
- 22 2. The claimant has the following severe impairments: Partially resected
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1 ganglioneuroma communicated to the spinal column; chronic migraines and
2 tension headaches, not intractable; and obesity. See 20 C.F.R. §416.920(c).

3 3. The claimant does not have an impairment or combination of impairments
4 that meets or medically equals the severity of one of the listed impairments
5 in 20 C.F.R. Part 404, Subpart P, Appendix 1. See 20 C.F.R. §§416.920(d),
6 416.925(d), 416.926.

7 4. The claimant has the RFC to perform the full range of medium work as
8 defined in 20 C.F.R. §416.967(c).

9 5. The claimant has no past relevant work. See 20 C.F.R. §416.965.

10 6. Considering the claimant's age, education, work experience, and RFC,
11 there are jobs that exist in significant numbers in the national economy that
12 the claimant can perform. See 20 C.F.R. §§416.969, 416.969(a).

13 7. The claimant has not been under a disability, as defined in the Act, since
14 January 8, 2016, the application date. See 20 C.F.R. §416.920(g).

15 AR at 15-22.

16 V. ISSUE ON APPEAL

17 The issue on appeal is whether the ALJ erred in evaluating Plaintiff's migraine
18 headache symptom testimony. Pl. Op. Br. (Dkt. #9) at 2. Plaintiff argues that, if the
19 Court finds error, it should remand this matter for an award of benefits. Id. at 2-3.

20 VI. DISCUSSION

21 Plaintiff argues that ALJ Hill failed to account for Plaintiff's migraine symptom
22 testimony in the RFC. Pl. Op. Br. at 2. Plaintiff's argument is fundamentally flawed
23 because it assumes that ALJ Hill accepted Plaintiff's testimony regarding the severity of
her migraine headache symptoms. See id. But ALJ Hill did not accept that testimony.
ALJ Hill instead noted that Plaintiff's headaches were well-controlled on medication, that
Plaintiff primarily experienced them during her menses, and that they were less intense as

1 of February 2016. AR at 19. ALJ Hill noted that Plaintiff reported in her migraine log
2 experiencing intense headache pain about once a month, lasting a couple of days. Id.
3 ALJ Hill found, however, that “this degree of complaint is not documented elsewhere in
4 the record.” Id. Plaintiff “received trigger point injections, which provided some relief.”
5 Id. Because ALJ Hill rejected Plaintiff’s migraine symptom testimony, he had no
6 obligation to including any correlating limitations in the RFC. See Stubbs-Danielson v.
7 Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008).

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9 Even assuming Plaintiff is challenging ALJ Hill’s rejection of Plaintiff’s symptom
10 testimony regarding her migraine headaches, Plaintiff fails to show harmful error. See
11 Ludwig v. Astrue, 681 F.3d 1047, 1054 (9th Cir. 2012) (citing Shinseki v. Sanders, 556
12 U.S. 396, 407-09 (2009)) (holding that the party challenging an administrative decision
13 bears the burden of proving harmful error). ALJ Hill rejected Plaintiff’s migraine
14 symptom testimony because it was inconsistent with the medical evidence. AR at 19.
15 An ALJ may reject a claimant’s symptom testimony when it is contradicted by the
16 medical evidence. See Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 1161
17 (9th Cir. 2008) (citing Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir.1995)). As noted
18 above, ALJ Hill found that Plaintiff’s migraines were well-controlled on medication. See
19 AR at 19, 235, 390-91, 402. As of February 2016, Plaintiff’s symptoms primarily
20 occurred with her menses, and were less intense. Id. at 19, 374.

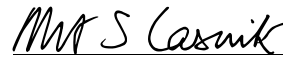
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22 Plaintiff has not provided even a single citation to the medical record contradicting
23 ALJ Hill’s evaluation of the evidence. See Pl. Op. Br. at 2-3; Pl. Reply Br. (Dkt. #11) at

1 1-2. Plaintiff has therefore failed to show that ALJ Hill erroneously interpreted the
2 medical record in finding that it contradicted Plaintiff's migraine symptom testimony.
3 See Ludwig, 681 F.3d at 1054 (citing Shinseki, 556 U.S. at 407-09).

4 VII. CONCLUSION

5 For the foregoing reasons, the Court AFFIRMS the Commissioner's decision and
6 DISMISSES this case with prejudice.

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8 Dated this 30th day of October, 2019.

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11 ROBERT S. LASNIK
12 United States District Judge
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